

**CITY OF UPLAND
LETTER AGREEMENT**

DECEMBER 13, 2021

COMMERCIAL DOOR COMPANY, INC.
1374 E. NINTH STREET
POMONA, CA
91766

Letter Agreement for Fleet Shop Garage Door Replacement Project

Parties: This letter shall be our Agreement ("Letter Agreement") regarding the purchase and installation of **City of Upland Fleet Shop Garage Doors** (10), described below ("Services") to be provided by Commercial Door Company, Inc. ("Consultant") to the City of Upland, a municipal corporation organized under the laws of the State of California with its principal place of business at 460 N. Euclid Avenue, Upland, California 91786 (the "City") for the **City's Fleet Shop Garage Door Replacement** ("Project"). City and Consultant are sometimes referred to herein as "Party" or "Parties."

Services; Schedule of Performance: The Services to be provided are more particularly described in the Scope of Services attached hereto as Exhibit "A" and are incorporated herein by reference. Services on the Project shall begin **February 28, 2022**, and shall be completed by **March 31, 2022**, unless extended by the City in writing.

Note - Due to materials shortages with the manufacture when ordering, Commercial Door request for the Right to Extend beyond March 31, 2022, based on materials/equipment availability.

Standard of Care: Consultant shall perform all Services under this Letter Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California, and consistent with all applicable laws. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Letter Agreement.

Substitution of Key Personnel: Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Letter Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Letter Agreement for cause. The key personnel for performance of this Letter Agreement are as follows: **Chuck Nugent**.

Compensation: Compensation shall be based on the actual amount of time spent in adequately performing the Services and shall be billed at the rate(s) set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed **\$71,305.00**. The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council. Consultant's invoices shall include a detailed description of the Services performed. Invoices shall be submitted to the City on a monthly basis as performance of the Services progresses. City shall review and pay the approved charges within thirty (30) days of receipt of such invoices. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant, within thirty (30) days of receipt of an invoice, of any disputed fees set forth therein. The City shall review and pay the approved charges on such invoices in a timely manner.

Prevailing Wages: Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Letter Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify, and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

If the Services are being performed as part of an applicable "public works" or "maintenance" project and the total compensation exceeds \$25,000, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

Insurance: Consultant shall take out and maintain: A. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/\$2,000,000 general aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01; B. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per occurrence for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto); C. Workers' Compensation Insurance in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and D. Professional Liability (Errors and Omissions) Insurance, if required by the City, that covers the Services to be performed, in the minimum amount of \$1,000,000 per claim and in the aggregate, with conditions and for a term acceptable to the City. Insurance carriers shall be licensed and

authorized to do business in California. Such insurance carrier shall have not less than an "A:VII" rating according to the latest Best Key Rating unless otherwise approved by City. Consultant shall add City, its officers, officials, employees, agents, and volunteers as additional insureds on Consultant's Commercial General Liability and Automobile Liability. All insurance coverage maintained or procured pursuant to this Letter Agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers, or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it.

Termination: The City may terminate this Letter Agreement at any time with or without cause. If the City finds it necessary to terminate this Letter Agreement without cause before Project completion, Consultant shall be entitled to be paid in full for those Services adequately completed prior to the notification of termination. Consultant may terminate this Letter Agreement upon 30 calendar days' written notice to the City but only in the event of City's failure to perform in accordance with the terms of this Letter Agreement through no fault of Consultant.

Indemnification: To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Letter Agreement, including without limitation the payment of all expert witness fees, attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers. The only limitations on this provision shall be those imposed by Civil Code section 2782.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

Laws & Regulations: Employee/Labor Certifications: Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services. By executing this Letter Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Consultant shall maintain records of its compliance, including its verification of each employee, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to BB&K (2020)

Consultant's compliance with the requirements. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subconsultants, sub-subconsultants and consultants performing any work relating to the Project or this Letter Agreement to make the same verifications and comply with all requirements and restrictions provided herein. Consultant's failure to comply or any material misrepresentations or omissions relating thereto shall be grounds for terminating this Letter Agreement for cause. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment in violation of state or federal law. As provided for in the indemnity obligations of this Letter Agreement, Consultant shall indemnify City against any alleged violations of this paragraph, including, but not limited to, any fines or penalties imposed by any governmental agency.

Independent Contractor. Consultant is retained as independent contractor and is not an employee of the City. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

Governing Law; Venue; Government Code Claim Compliance: This Letter Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Letter Agreement, the action shall be brought in a state or federal court situated in San Bernardino County, State of California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

Assignment; Amendment: Consultant shall not assign, sublet, or transfer this Letter Agreement or any rights under or interest in this Letter Agreement without the written consent of the City. This Letter Agreement may not be modified or altered except in writing signed by both Parties. There are no intended third party beneficiaries of any right or obligation of the Parties.

Miscellaneous Terms: This is an integrated Letter Agreement representing the entire understanding of the Parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. Since the Parties or their agents have participated fully in the preparation of this Letter Agreement, the language of this Letter Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Letter Agreement. The unenforceability, invalidity or illegality of any provision(s) of this Letter Agreement shall not render the other provisions unenforceable, invalid or illegal. Notice may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to the Parties to the addresses set forth in this Letter Agreement.

Consultant warrants that the individual who has signed this Letter Agreement has the legal power, right and authority to make this Letter Agreement and bind the Consultant hereto. If you agree with the terms of this Letter Agreement, please indicate by signing and dating where indicated below.

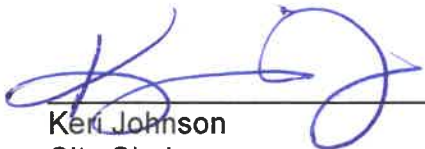
CITY OF UPLAND

Approved By:



Michael Blay
City Manager

Attest:



Kerl Johnson
City Clerk

APPROVED AS TO FORM:

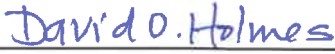
By: 

Best Best & Krieger LLP
City Attorney

COMMERCIAL DOOR, INC.




Signature



Name



Title



Date

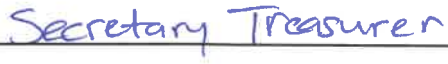
**(Two Signatures of Corporate Officers
Required for Corporations)**




Signature



Name



Title



Date

EXHIBIT "A"

SCOPE OF SERVICES

PLANS & SPECIFICATIONS

REQUEST FOR QUOTATION

DATE: November 1, 2021

PROJECT NAME: Fleet Shop Sheet Door Project

PROJECT ADDRESS: 1370 N. Benson Ave, Upland, CA. 91786

SCOPE OF WORK: Roll-Up Sheet Doors (10) – Removal & Replacement.

Vendor Requirement Details:

All quotes are to include "**Prevailing Wage**" rates.
Awarding vendor must obtain a City of Upland business license.
Awarding vendor must provide liability insurance and name the City of Upland as additionally insured.
Contractor to remove and dispose of all existing tilt-up canopy doors, equipment, and waste materials/items.

Project Details:

Fleet Shop Roll-Up Sheet Door(s) – Removal & Replacement.
Remove existing tilt-up canopy doors and all equipment.
Furnish and install "**Porvene Doors**" **Model 233** - 20' x 14' roll up sheet door. **Wind Rated.**
Includes: 26 Gauge curtain, roll formed guides, bottom rail, slide locks, hand chain operation, chain keeper.

Additional Items & Inclusions:

Proposal shall include all of the following:
Doors, Equipment and Materials, Tax, Labor, and Removal & Disposal of Existing Equipment.
Door shall be white in color.
Scissor lift and forklift to perform the project.

Project Site Walk:

A one time, site walk will be scheduled for all interested vendors for the purpose of information gathering and overall project expectations.

Quote Details:

Total Sum shall be for ten (10) complete Porvene sheet doors, equipment, and materials.

EXHIBIT “B”

COMPENSATION

SEE ATTACHED



Commercial Door Company, Inc.

1374 E. Ninth Street - Pomona, CA 91766
Telephone: (909) 622-6400 - Fax: (909) 622-1463

Proposal & Contract No.: POM038966

Date: November 05, 2021

Submitted To:

Company: City Of Upland
Address: 460 N. Euclid Ave
City: Upland
State: Ca Zip: 91785
Name: Richard Smiderle
Office: (909) 204-9037 x
Fax: _____ Cell: _____

Jobsite:

Company: City Yard
Address: 1370 N. Benson Ave
City: Upland, Ca 91786
Contact: Rick LeBlanc
Job Phone: (909) 694-7397 x
Cell: _____
E-Mail: rsmiderle@ci.upland.ca.us

We hereby submit the following proposal:

Roll Up Sheet Doors

Remove existing canopy doors. Furnish and install (10) model 233 20' x 14' roll up sheet door. Includes: 26 Ga wind lock curtain , wind lock guides, bottom rail, slide locks, hand chain operation, chain keeper, white in color, (Curtain is rated for 20 P.S.F. Windload).

Includes: Material, Tax, Labor, Disposal and Equipment.

Cost of scissor lift and Forklift included in quote.

Project is quoted Prevailing wage.

NOTES:

*Prices are based on non-prevailing wage work performed Monday thru Friday 7:30 a.m. to 4:00 p.m., unless otherwise specified.

*Commercial Door is fully insured however, special insurance requests are subject to an additional charge.

Terms:

We hereby propose to furnish **Materials Only X Labor and Material** - complete in accordance with the above specifications FOR THE SUM OF : \$71,305.00

Payment to be made as follows: **X Net 15** **Net 30** **COD** **TBD** **Other: 50 Percent Deposit Required**

For Commercial Door by: Chuck Nugent

Note: This proposal is good for 15 days.

Acceptance & Authorization

Commercial Door agrees to furnish necessary labor, materials and tools to complete all contracted work to professional standards. Permits, electrical wiring, hook up for electrical operators and finish painting are not included unless specifically noted in this contract. Excludes any hidden damage due to concrete cutting. Delays in commencement or completion of work beyond our control will be billed at the applicable hourly rate. This contract constitutes the full agreement between Commercial Door and the customer. Any changes or additions to this contract must be in writing and signed by both parties. Alterations or changes to work specified in this contract that involve extra costs for labor or materials will require written authorization from the customer and will become additional charges to the contracted amount. In the event of litigation, the customer agrees to pay for all attorney's fees and court costs incurred by Commercial Door to enforce the terms of this contracts and it addendums.

Acceptance of Proposal: The above prices and specifications are satisfactory and hereby accepted. You are authorized as specified. Payment will be made as outlined above.

Date of Acceptance

P.O. Number

x Signature